REMARKS

In view of the foregoing amendment to the Claims and the following Remarks, Applicant requests reconsideration of the present Office Action. Claims 1-22 are cancelled and new claims 23-38 are presented.

1. Rejections - 35 USC § 102

The Patent Office rejects Claims 1, 8, 10 and 19-21 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,755,158 (Wise). Regarding claim 1, the Patent Office alleges that Wise ('158) teaches the claimed process for making a fiber reinforced elastomeric article including, providing a mold, dipping said mold into a coagulant bath that provides a tacky surface onto said mold, spraying a plurality of *chopped* fibers onto pre-selected areas that stick to the coagulant, dipping said mold into a latex bath at least twice and drying said latex to form said elastomeric article (col. 3, lines 14-48).

Applicant submits that the Wise '158 patent does not anticipate the present invention as claimed. To be anticipatory under 35 U.S.C. §102, a patent reference must "describe" each and every element recited in the claims at hand. The Wise '158 patent neither teaches nor describes creating *in-situ* a self-supporting, elastic nonwoven web on at least a portion of a mold from a deposition of a plurality of thermoplastic polymer filaments. The filaments are interconnected and/or self-adhering to each other. As is understood by those skilled in the art, chopped fibers are very short compared to continuous stranded filaments. A layer or layers of such short fibers do not possess the requisite elastic and integral strength properties of thermoplastic filaments in a nonwoven web. Hence, the two kinds of fibers are very different. Short chopped fiber mats are neither elastic nor self-supporting, like thermoplastic webs can be, and will fall apart under significant levels of tension or shear stress. Since the Wise '158 reference does not disclose the present limitations, as required by all of the presently pending claims, it is not anticipatory under 35 U.S.C. §102. In view of the foregoing amendments and remarks, Applicant requests that the rejection be withdrawn.

2. Rejections - 35 USC § 103

The Patent Office rejects Claims 2-7, 9 and 11-21 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,755,158 (Wise) in view of U.S. Patent No. 6,811,638 B2 (Close *et al.*). The Patent Office alleges that it would have been obvious for one of ordinary skill to spray melt-blown fibers as taught by Close'638 in the process of Wise '158 because of known advantages that melt-blow fibers provide versatile characteristics and ease of operation and because Wise '158 teaches spraying a plurality of chopped fibers, hence suggesting the tacky, melt-blown fibers of Close *et al.*

The Patent Office has not justified a *prima facie* case of obviousness. In ascertaining the difference between the prior art and the claims at issue (second factual inquiry of *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966)), it is essential to view the claimed "subject matter as a whole," as required by §103. *In re Dembriczak*, 175 F.3d 994, 998, 50 USPQ2d 1614, 1616 (Fed. Cir. 1999). In so doing, one should not focus on the obviousness of the individual substitutions and differences between the claimed invention and the references, rather one should focus on the obviousness of the claimed invention *as a whole* relative to that reference. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1383, 231 USPQ 81, 93 (Fed. Cir. 1986), cert. denied, 480 U.S. 947 (1987). A person of ordinary skill would not look to a reference like the Close '638 patent, which teaches a method for increasing the amount of retraction in a composite elastic material or Stretched Bond Laminate (SBL), to combine with the teachings of a spray-on flock fibers on a glove mold as described in Wise '158. As Applicant explained in the prior section, short chopped fibers (i.e., typically under about 1 mm in length) and largely continuous (long) melt-blown fibers are two different and distinct kinds of fibrous elements. A person of ordinary skill in the art understands that short chopped fibers or flock refer to natural or pulp-based fibers. Short chopped fibers are not elastic and do not form self-supporting networks without the addition of adhesives or other binders, unlike the mechanical and processing properties of extruded thermoplastic filaments, which in the pertinent art is a significant difference. A person of skill would know that one kind of fiber can not be substituted for the other.

Although Wise '158 teaches a fiber reinforced glove (paddling glove), the chopped fibers in Wise serve a different function than in the present invention. Wise's chopped fibers anchor the adhesive on the two sides of the interior web surfaces between digits (i.e., fingers) (see, col.

3, line 64 – col. 4, line 11), but does not provide structural or mechanical reinforcement to the latex membrane, which safeguards the membrane from rupturing under stress. Contrary to the Patent Office's assertion, whether one sprays the fibers prior to dipping the mold into a coagulant or after dipping does have an affect on results. The particular order for executing the spraying and dipping step can result in different morphology and other characteristics in the product. For instance, a mold that is covered first with an elastic thermoplastic web and then covered with latex has the elastomer material permeate all of the interstial space in the web. With a mold that has first a latex coating and is then subsequently sprayed with thermoplastic filaments, the individual filaments stick either to the latex or each other, but not all of the fibers or interstices are coated or filled with the elastomer. In otherwords, certain parts of the filaments may embed within the latex, but significant other parts of the filaments will be outside of the latex. In the case of a glove or other article that may will be stripped from the mold and inverted, for example, the initial layer that first contacts the mold, in the former situation, will become the outer surface of the article when inverted. The integrated and completely latex-permeated thermoplastic web adds mechanically reinforced strength and structural integrity to the article. The thermoplastic web that is applied after an intial latex coating is on the mold, as in the latter situation, is bonded less tightly in the structure of the article, and hence can be further modified or treated to provide other benefits, such as comfort or ease of donning, as one may desire. Pulp or other kinds of staple fibers may be added, but they do not provide the same degree of mechanical infrastruture or backbone and fibrous reinforcement as the self-supporting, elastic thermoplastic nonwoven web does.

As the Patent Office concedes, although Wise '158 teaches spraying a plurality of chopped fibers, it does not teach spraying tacky melt-blown fibers. There is no showing by the Patent Office that one of ordinary skill by merely reading the Wise '158 patent would be inclined to substitute a polymer extrusion process for a short-fiber flocking process as described, without any further teaching from the references themselves of such a combination. To achieve the properties of the claimed invention, a skilled person could not reasonably think that such different kinds of materials and processes in one reference is fungible with another when the physical properties of the two are so different. Short chopped fibers do not inform the making of an elastic article, since short fibers do not flex well. Applicant's invention claims a fibrous

reinforcement that derives, in part, from an elastic web infrastructure that is designed to flex with the elastomeric substrate and conform nicely to a user.

The Patent Office has not cited any reference demonstrating the use of thermoplastic gas-blown process to create *in situ* a self-supporting, elastic thermoplastic nonwoven web, in which said filaments are self-adhering to one another, without a separate adhesive, and covering at least a portion of a three-dimensional mold or former other than Applicant's own invention. The primary teaching of the Close '638 patent relates to increasing the ability of retraction while saving on the amount of material. Even though the Close '638 patent uses capillaries to extrude thermoplastic material, the reference as a whole teaches a process for making melt-blow fibers to form a sheet that is then laminated with at least one non-elastic web layer (col. 3, lines 51-55). Close *et al.* neither teach or describe how improved retraction characteristics can be an advantage when completely or partially embedded in latex substrates, since the reference does not mention employing elastic thermoplastic webs in combination with elastomeric lattices for improved tear resistance of the elastomer. Since the reference is silent, one of ordinary skill in the art would not have been motivated to combine the references. By suggesting that it would have been obvious for a person of ordinary skill to select a substitute a thermoplastic extrusion process for a chopped-fiber flocking process is in effect using Applicant's own invention as a demonstration of obviousness. Such reasoning is clearly a demonstration of impermissible hindsight reconstruction.

Lastly, a combination of Wise '158 and Close '638 patents with U.S. Patent No. 5,137,032 (Harmon) does not establish a *prima facie* case of obviousness with respect to a condom, since Applicant has already shown that Wise '158 and Close '638 do not teach the present invention as claimed, and Harmon alone neither anticipates nor makes the claimed invention obvious, since it uses cotton microfibers in a manner similar to that of Wise (see col. 6, lines 40-51). Further, the fibrous coating is present only on the surface.

For the foregoing reasons, Applicant respectfully submits that the requirements for a *prima facie* case of obviousness has not been met, and requests that the Patent Office withdraw the rejection.

Conclusion

In view of the amendments and remarks, above, Applicant respectfully submits that all of the presently presented claims are in condition for allowance.

Applicant believes that the present Response is timely, but should Applicant be in error, Applicant respectfully requests the Office grant such time pursuant to 37 C.F.R. 1.136(a) as necessary to make this response timely, and hereby authorizes the Office to charge any necessary fee or surcharge with respect to time extension to the Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Please direct any questions or comments to Vincent T. Kung at: tel. 770-587-8606.

Respectfully submitted,

Thomas G. Triebes *et al.*

By _____

Vincent T. Kung
Registration No.: 45,797
Attorney for Applicant(s)

CERTIFICATE OF TRANSMISSION

I, Erminia Brown, hereby certify that on April 13, 2006 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

By: _____

Erminia Brown